



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

RICE DANIEL
ATTORNEY GENERAL

November 9, 1951.

Hon. J. W. Edgar
Commissioner of Education
Texas Education Agency
Austin, Texas

Opinion No. V-1342.

Re: Applicability of
"Non-Subversive
Oath" to employees
of local school
districts and Pub-
lic Junior Colleges.

Dear Sir:

You have requested an opinion of this of-
fice in regard to the following questions:

"1. Under what conditions, if any,
would persons employed by local school
districts be required to execute the
"Non-Subversive Oath" required in Arti-
cle VI, Section 1, of H.B. 426, Acts 52nd
Leg., R.S. 1951, ch. 499, p. 1228 (the
general appropriation bill for the bien-
nium ending August 31, 1953)?

"2. Under what conditions, if any,
would teachers employed in public junior
colleges be required to execute the "Non-
Subversive Oath" required in Article VI,
Section 1, of H.B. 426, Acts 52nd Leg.,
R.S. 1951, ch. 499, p. 1228?"

Sections 32 and 33 of Article III, House
Bill 426, supra, appropriate the necessary money for
the State's contribution to the Foundation School
Program for the biennium ending August 31, 1953.
These funds are distributed to all participating
school districts in accordance with the formula set
out in the Foundation School Program act. Arts. 2922-
11 et seq., V.C.S. Your letter states:

". . . Such funds are commingled in
the depository bank for each school dis-
trict with local funds derived from taxa-
tion and other local sources. Compensa-
tion to individuals for personal services

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rendered and other operating costs of the district are paid from such commingled funds upon order of the local board of trustees."

Thus money appropriated by House Bill 426, supra, is being used to pay, at least in part, the salaries of local school district employees.

House Bill 426 also appropriates to the State Board of Education the unexpended balance and income of the State Available School Fund for expenditures in accordance with the laws of this State. Art. III, H.B. 426, supra, at p. 1319. Article 2827 V.C.S., provides in part:

"1. The State and county available funds shall be used exclusively for the payment of teachers' and superintendents' salaries, fees for taking the scholastic census, and interest on money borrowed on short time to pay salaries of teachers and superintendents, when these salaries become due before the school funds for the current year become available; provided that no loans for the purpose of payment of teachers shall be paid out of funds other than those for the then current year.

"2. Local school funds . . . may be used . . . for the payment . . . of janitors and other employees. . . ; provided, that when the State available school fund in any city or district is sufficient to maintain the schools thereof in any year for at least eight months, and leave a surplus, such surplus may be expended for the purposes mentioned herein."

House Bill 426 also contains the "Non-subversive Oath" requirement, Section 1 of which provides:

"No money appropriated by this Act shall be paid to any person as salary or as compensation for personal services unless and until such person has filed

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with the payroll clerk or official by whom such salary or other compensation is certified for payment, an oath or affirmation stating: . . ."

In our Opinion V-1263 (1951), we held valid all of the Non-Subversive Oath except the retrospective portion thereof. A copy of this opinion is attached.

Since it is clear from your letter that part of the appropriated money is commingled with funds from other sources to pay salaries and other personal services compensation, it will be necessary for all persons receiving salary or compensation from such commingled funds to take the required oath. This is necessary to insure that all of the State's appropriation is handled in compliance with the above section. Thus, a person in any one of the above categories who receives all or a portion of his salary or compensation from monies coming originally from the State Available School Fund or the general fund must take the oath prior to receiving payment.

The funds in the general appropriation bill for the Public Junior Colleges are to be expended only for the "payment of adequate instructional salaries and the purchase of supplies and materials required for adequate instruction." Sec. 5, Art. IV of I.B. 426, supra, at p. 1445. Those instructors whose salary or compensation will be paid in whole or in part from these funds are required to take the "Non-Subversive Oath" prior to receipt of the salary or compensation.

SUMMARY

All persons receiving salary or compensation from funds that are in whole or in part received from State appropriations in the general appropriation bill to the Foundation School Program, or from funds appropriated from the State Available School Fund, or the Public Junior Colleges appropriation must execute the "Non-Subversive Oath" as set out in Att'y Gen. Op.

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V-1263 (1951) prior to receipt of the salary or compensation.

Yours very truly

APPROVED:

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